

Introduced by Senator Cox

January 25, 2006

An act to amend Section 20001 of the Business and Professions Code, relating to franchises.

LEGISLATIVE COUNSEL'S DIGEST

SB 1201, as introduced, Cox. Franchises.

Existing law, the California Franchise Relations act, imposes certain requirements on franchises, and defines the term "franchise" for purposes of the Act. Existing law also excludes specified entities from the act's provisions.

This bill would also exclude a fractional franchise, as defined, from the act's provisions.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 20001 of the Business and Professions
2 Code is amended to read:
3 20001. As used in this chapter, "franchise" means a contract
4 or agreement, either expressed or implied, whether oral or written,
5 between two or more persons by which:
6 (a) A franchisee is granted the right to engage in the business
7 of offering, selling or distributing goods or services under a
8 marketing plan or system prescribed in substantial part by a
9 franchisor; and
10 (b) The operation of the franchisee's business pursuant to that
11 plan or system is substantially associated with the franchisor's
12 trademark, service mark, trade name, logotype, advertising, or

1 other commercial symbol designating the franchisor or its affiliate;
2 and

3 (c) The franchisee is required to pay, directly or indirectly, a
4 franchise fee.

5 (d) “Franchise” does not include any of the following:

6 (1) Any franchise governed by the Petroleum Marketing
7 Practices Act (P.L. 95-297).

8 (2) Lease departments, licenses, or concessions at or with a
9 general merchandise retail establishment where the lease
10 department, licensee, or concessionaire is incidental and ancillary
11 to the general commercial operation of the retail establishment.
12 Sales of a leased department, license, or concessionaire are
13 incidental and ancillary to the general commercial operation of
14 the retail establishment if they amount to less than 10 percent of
15 the establishment’s sales.

16 (3) A nonprofit organization operated on a cooperative basis by
17 and for independent retailers which wholesales goods and services
18 primarily to its member retailers and in which all of the following
19 is applicable:

20 (A) Control and ownership of each member is substantially
21 equal.

22 (B) Membership is limited to those who will use the services
23 furnished by the organization.

24 (C) Transfer of ownership is prohibited or limited.

25 (D) Capital investment receives no return.

26 (E) Substantially equal benefits pass to the members on the
27 basis of patronage of the organization.

28 (F) Members are not personally liable for obligations of the
29 organization in the absence of a direct undertaking or authorization
30 by them.

31 (G) Services of the organization are furnished primarily for the
32 use of the members.

33 (H) Each member and prospective member is provided with an
34 offering circular which complies with the specifications of Section
35 31111 of the Corporations Code.

36 (I) No part of the receipts, income, or profit of the organization
37 are paid to any profitmaking entity, except for arms-length
38 payments for necessary goods and services and members are not
39 required to purchase goods or services from any designated
40 profitmaking entity.

1 (J) The nonprofit organization is subject to an action for
2 rescission or damages under Section 3343.7 of the Civil Code if
3 the organization fraudulently induced the plaintiff to join the
4 organization.

5 (4) *A fractional franchise. The term fractional franchise means*
6 *a relationship that meets all of the following requirements:*

7 (A) *The franchisee or an existing executive officer, director, or*
8 *managing agent of the franchisee, has been engaged in a business*
9 *substantially similar or related to the business arising from the*
10 *relationship for a period of at least 24 months prior to the date of*
11 *the agreement establishing the relationship.*

12 (B) *The product or service subject to the agreement is*
13 *substantially similar or related to the products or services being*
14 *offered by the existing business of the franchisee.*

15 (C) *The parties anticipated, in good faith, on the date of the*
16 *agreement establishing the relationship, that the sales arising from*
17 *the relationship would not represent more than 20 percent of the*
18 *total sales in dollar volume of the franchisee on an annual basis.*

19 (D) *The franchisee is not controlled by the franchisor.*